REMARKS

Claims 1-9 are pending in this application and have been rejected. Claims 1 and 5 have been revised to clarify the present invention. Claims 1 and 5 are independent.

Claims 1, 5 and 9 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over International patent publn. no. WO 02/49343 to Leaning, et al. in view of U.S. patent. appln. publn. no. 2002/0107759 to An. Applicant respectfully traverses this rejection, and submits the following arguments in support thereof.

Claim 1 describes a server having access to at least one set of files (S_i) generated by slicing an encoded multimedia content in at least one set of slicing positions ($\{T_{.i,1}, \ldots, T_{i,K}\}$) forming slices that can be decoded independently one from the other, and by enclosing each slice in a file ($F_{i,j}$) thereby generating at least one set of files. The server includes means for receiving an initial request directed to a multimedia content from a client device, the multimedia content including at least one of audio content and video content, means for sending a document to the client device upon reception of the initial request, the document causing the client device to repetitively send a fetching request designating the multimedia content, wherein the fetching request does not identify a specific file to be sent from the server to the client device, and means for selecting at least one file including at least one of audio content and video content amongst the set(s) of files, upon reception of the fetching requests from the client device. The server also has means for downloading the selected file(s) to the client device.

Claim 5 involves a method for downloading an encoded multimedia content to a client device by encoding a multimedia content, the multimedia content including at least one of audio content and video content, slicing the encoded multimedia content in at least one set of slicing positions forming at least one set of slices that can be decoded independently one from the other, enclosing each slice in a file thereby generating at least one set of files, receiving an initial request from the client device, the initial request being directed to the multimedia content, sending a document to the client device upon reception of the initial request, the document causing the client device to repetitively send a fetching request designating the multimedia content, wherein the fetching request does not identify a specific file to be sent from the server to the client device, and selecting at least one file including at least one of audio content and video content amongst the set(s) of files, upon reception of the

fetching requests from the client device. The method also includes downloading the selected file(s) to the client device.

Thus, it should be noted that both claims 1 and 5 are directed to the transfer of multimedia content having at least one of audio content and video content.

Leaning involves the delivery of recorded audio or visual material from a server to a client device (abstract). The Office Action admits that "Leaning fails to disclose the fetching request does not identify a specific file to be sent from the server to the client device" (Office Action, pg. 4).

An is alleged to remedy Leaning's admitted deficiencies. In relying on An, the Office Action characterizes An as being analogous art. Applicant, however, respectfully disagrees with such characterization and submits that An is not analogous art the teachings of which can be readily combined with Leaning. As explained below, this invention and Leaning are directed to the smooth downloading of content, whereas An deliberately interrupts the downloading of content with advertisements, meaning a person skilled in the art seeking to improve the smoothness and speed of content downloading would disregard An.

Analogous art is discussed in M.P.E.P. § 2141.01(a)(I), which states:

> I. TO RELY ON A REFERENCE UNDER 35 U.S.C. 103, IT MUST BE ANALOGOUS PRIOR ART
>
> The examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. **>"Under the correct analysis, any need or problem known in the field of endeavor at the time of the invention and addressed by the patent [or application at issue] can provide a reason for combining the elements in the manner claimed. " KSR International Co. v. Teleflex Inc., 550 U.S. ___, ___, 82 USPQ2d 1385, 1397 (2007). Thus a reference in a field different from that of applicant's endeavor may be reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his or her invention as a whole.<

Both the claimed invention and Leaning involve the processing of multimedia data in a manner which provides for rapid and smooth playback (at page 1, Leaning states "to provide the consumer with an immediate high-quality program experience" and "[s]treamed content is characterized by the ability of the receiving device to render the content (e.g. video programs) to the consumer without waiting for the entire video file to be downloaded.). At page 2 Leaning criticizes buffering schemes which result in playback delay to the user.

An is directed to a system for embedding advertisements in transferred electronic books or digital multimedia, the amount of book or multimedia data being transferred being directly related to the degree that the user views the advertisement (Abstract; para. [0015]). In other words, if the user views the advertisement for a long time, more book data would be transferred thereafter. And An states that the content and advertisements are provided in alternating fashion (para. [0017]. So An's goal is to force the viewer to obtain the book or multimedia data in an interrupted fashion, by first viewing an advertisement and then receiving the content. An is not concerned with the smooth and uninterrupted transfer of content - An **deliberately interrupts** the transfer of the content (see, for example, Figs. 3-6, and paras. [0054], [0056], [0059], [0061], [0065]-[0067], [0071]-[0073]).

An in fact is concerned with the transfer of advertising more than the transfer of the e-book or multimedia data. An deliberately interrupts the transfer of the content to the users to insert advertisements.

Consequently, a person skillet in the art seeking to improve the flow of multimedia data transfer to a client device would not look to An, since An deliberately interrupts such transfer. One cannot say that An "logically would have commended itself to an inventor's attention in considering his or her invention as a whole", which as noted above M.P.E.P. § 2141.01(a)(I) requires be the case if a reference is to constitute analogous art.

An therefore is non-analogous art, and so is not properly combined with Leaning.

For all the foregoing reasons, the asserted combination of Leaning and An is not well-taken, and so the rejection of claims 1, 5 and 9 cannot stand. Favorable consideration and withdrawal of this rejection are respectfully requested.

Claims 2-4 and 6-8 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Leaning in view of An, and further in view of U.S. patent appln. publn. no. 2003/0236564 to Lai. Applicant respectfully traverses this rejection, and submits the following arguments in support thereof.

Claims 2-4 and 6-8 depend from claims 1 and 5, respectively, and so incorporate by reference all the features of claims 1 and 5, including those features just shown to patentably distinguish over Leaning. and An. As explained above, An is not analogous art and so is not properly combined with Leaning.

Since Leaning and An are not properly combined, this rejection cannot stand. Accordingly, claims 2-4 and 6-8 patentably distinguish over the combination of Leaning, An and Lai at least for the same reasons that claims 1 and 5 patentably distinguish over Leaning and An. Favorable reconsideration and withdrawal of this rejection are therefore respectfully requested.

CONCLUSION

Applicant respectfully submits that all outstanding rejections have been addressed and are now either moot or are overcome. Applicant further submits that all claims pending in this application are patentable over the prior art. Accordingly, favorable consideration and prompt allowance of this application are respectfully requested.

No fees are believed to be due in connection with the filing of this paper. If, however, the Commissioner deems any additional fee(s) to be now or hereafter due in connection with this application, authority is given to charge all such fees to Deposit Account No. 50-4019.

In the event that there are any questions, or should additional information be required, please contact Applicant's attorney at the number listed below.

Respectfully submitted,

Date: **November 1, 2010** By: */David L. Schaeffer/*

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